
IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1948.

No. 188.
PUBLIC SERVICE COMMISSION OF THE
STATE OF MISSOURI

v.
INTERSTATE NATURAL GAS COMPANY,
INCORPORATED, et al.

No. 209.
MEMPHIS LIGHT, GAS AND WATER DIVISION

v.
INTERSTATE NATURAL GAS COMPANY, —
INCORPORATED, et al.

No. 212.
ILLINOIS COMMERCE COMMISSION

v.
INTERSTATE NATURAL GAS COMPANY,
INCORPORATED, et al.

**MEMORANDUM OF SOUTHERN NATURAL
GAS COMPANY IN OPPOSITION.**

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Statement.

Southern Natural Gas Company has heretofore filed its answer and brief in opposition to the petition for writ of certiorari filed by the Federal Power Commission in No.

109. The answer and brief so filed are adopted by Southern Natural Gas Company by way of response to the petitions in No. 188 (Public Service Commission of the State of Missouri), No. 209 (Memphis Light, Gas and Water Division) and No. 212 (Illinois Commerce Commission), with respect to which the following comment is added.

No Standing for Petition as to Southern Natural Gas Company.

Neither the Public Service Commission of the State of Missouri (188) nor the Memphis Light, Gas and Water Division (209) nor the Illinois Commerce Commission (212) has jurisdiction over any sale within the transmission or distribution area of Southern Natural Gas Company. Nor do any of the authorities mentioned represent or have any standing to intervene or petition with respect to any purchaser or consumer of gas from Southern Natural Gas Company or any ultimate consumer of gas transported by Southern Natural Gas Company.

For that reason, so far as concerns the refund to Southern Natural Gas Company ordered by the Circuit Court of Appeals for the Fifth Circuit, none of the above mentioned petitioners for writ of certiorari have any justiciable interest in the matter.

If and to the extent that the above named petitioners might or do contend that as a result of agreement with any other pipe line company which purchased from Interstate or as a result of rate proceedings under the Natural Gas Act or otherwise, to which the respective authorities and such other pipe line companies were parties, rights were created with respect to other pipe line companies affording a basis for petition for certiorari, such contention could not possibly relate or extend to so much of the order of the Fifth

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Circuit as relates to distribution to Southern Natural Gas Company.

Southern Natural Gas Company had no agreements or relations with any of the petitioners above designated. Therefore, if conceivably any of the petitions for writ of certiorari filed by the designated authorities should be granted, it is respectfully asserted that the writ should exclude any effect, bearing or consideration upon the order of distribution as to Southern Natural Gas Company.

**Federal Power Commission Also Without Standing
as to Writ.**

It is also the position of the latter company that the Federal Power Commission (Petitioner in No. 109) is likewise without any justiciable right to seek or obtain a writ of certiorari in so far as Southern Natural Gas Company is concerned.

It is submitted that if and to the extent that the Federal Power Commission has any standing or jurisdiction with respect to the rates or revenues of Southern Natural Gas Company, such jurisdiction is limited to proceedings under the Natural Gas Act and confers no right to oblique or indirect proceedings to accomplish a retroactive reduction in the rates to which Southern Natural Gas Company became entitled when the order of the Federal Power Commission reducing the rates of Interstate Natural Gas Company and others was affirmed.

Precisely as the Missouri and Illinois Commissions and the Memphis Light, Gas and Water Division have no right to insist by petition for certiorari in this proceeding, or otherwise than an *amici curiae* in the Court below, that an extra territorial order relating to Southern Natural Gas

Company is inequitable or unjust, the Federal Power Commission clearly has no right to insist that a Circuit Court of Appeals should bypass the vested right of Southern Natural Gas Company to refunds and make distribution to ultimate consumers of gas purchased directly or immediately from Southern Natural Gas Company in respects as to which the Federal Power Commission has no jurisdiction whatever.

The petitions of the above designated petitioners emphasizes precisely, as was apparent from the petition of Federal Power Commission in No. 109, that the relief sought, viz., distribution of the impounded overcharge to the ultimate consumers who purchased, down stream, would necessarily cast upon the Circuit Court of Appeals the function of a rate making authority to determine or assume that the re-sale rates in effect from time to time by the purchasers from Interstate and the re-sale rates of subsequent transmission or distributing companies in the well-to-market process were excessive to the exact extent of the overcharge.

No Occasion Presented for Reviewing Central States Case.

Each of the above named petitions over-states the supposed compulsion upon the Circuit Court of Appeals of the decision in Central States Electric Company v. City of Muscatine, 324 U. S. 138.

We pointed out in our answer to the petition in No. 109 that there is nothing in the opinion or decision of the Circuit Court of Appeals to indicate that the order of distribution was compelled by the Central States Case.

The order of the Circuit Court of Appeals reserves all justiciable rights of all parties. It is obvious on the face

of this record that if granted, the respective petitions for writ of certiorari would involve the Circuit Court of Appeals in an unrelated series of rate hearings of great complexity and cost wholly unsuited to the functions of the Courts of Appeal.

Each of the petitions for writ of certiorari is predicated upon the untenable assumption that at the time, and at all of the times, during which the overcharges were being exacted under the stay order, the respective purchasers from Interstate were receiving so full and fair a return as that, in a plenary rate hearing involving that period, public authority having jurisdiction could and would have lawfully reduced the rates of the pipe lines accordingly.

We have pointed out that no such assumption is tenable, particularly as to Southern Natural, for a number of reasons, among others, the controlling reason that only a portion of its gas was purchased by Southern Natural from Interstate and that a large part of the gas purchased by Southern Natural Gas Company from Interstate was transmitted and sold by Southern Natural directly to industries for consumption and not for resale, and was therefore not subject to regulation as to the rate by Federal Power Commission; nor is there any suggestion in this record that Southern Natural Gas Company was subject to regulation as to those direct sales by any state or local authority. Thus the petition for writ seeks to impose on the Court of Appeals the function of a rate hearing or a "constitutional return" hearing which neither the Federal Power Commission nor any other administrative authority could initiate.

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Certiorari Is Not Appropriately Sought in These Petitions.

Petitioners are undertaking to obtain retroactive procedural relief, as to a detailed provision of a stay order entered in 1941, or, rather, retroactively to substitute a stay order running specifically in favor of ultimate consumers rather than in favor of those entitled as of right to refund of overcharges held to have been improperly exacted. That is not a proper objective of a petition for writ within the purview of Supreme Court Rule 38 (5).

There is present here neither substantial diversity nor public importance in the result. No ultimate consumer, industrial or otherwise, intervened in an effort to bypass the refund around the pipe lines entitled to it.

The petitions in their aggregate effect represent a gratuitous effort to have molecular amounts distributed to hundreds of thousands of ultimate consumers through the machinery of the Fifth Circuit.

There is no basic or important principle involved. The Circuit Courts of Appeals can in every instance where stay is requested under the Natural Gas Act give full and intelligent consideration to every argument and factor advanced by petitioners.

What petitioners seek to assure by these proceedings is an inflexible rule that no stay should be granted unless the Courts of Appeal shall undertake the function of distribution of the impounded funds to ultimate consumers in all cases, regardless of the particular circumstances. This would impose upon the Courts of Appeal an extraordinary rigidity, which is contrary to the public interest.

That objective is not within the intent of Rule 38 (5) as interpreted and applied by this Court.

The petition for writs of certiorari thus take no cognizance of the fact that they are directly or impliedly insisting upon the exercise by the Fifth Circuit of a function and jurisdiction with respect to which both the petitioners and the Circuit Court of Appeals are wholly without authority.

Respectfully submitted,

FORNEY JOHNSTON,

Attorney for Southern Natural
Gas Company.

September, 1948.